

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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PEDRO HERNANDEZ,

Petitioner,

-against-

22 **CIVIL** 2266 (CM)

JUDGMENT

DONITA MCINTOSH,

Respondent.

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It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Decision and Order dated June 11, 2024, Petitioner's and Respondent's objections to the Report are denied following a de nova review. Careful review of Magistrate Judge Lehrburger's Report reveals that there is no facial error in its conclusions. Judge Lehrburger's Report and his recommendations contained therein are adopted, as the decision of the Court. The petition for a writ of habeas corpus is denied and the petition is dismissed. Section 2253(c) permits the issuance of a Certificate of Appealability only where a petitioner has made a "substantial showing of the denial of a constitutional right." *Miller-El v. Cockrell*, 537 U.S. 322, 336-37 (2003). Under the controlling standard, a petitioner must "show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), (quoting *Barefoot v. Estelle*, 463 U.S. 800, 893, n. 4 (1983)). The Court finds that a certificate of appealability should issue as to the issue of the "Seibert/inadequate response to the jury note question." Accordingly, the Court

authorizes a Certificate of Appealability as to that limited issue and has declined to issue a certificate as to any other ground presented in the petition.

Dated: New York, New York

June 12, 2024

RUBY J. KRAJICK

Clerk of Court

BY:

K. mango

Deputy Clerk